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In the Supreme Court of the United States

OCTOBER TERM, 1979

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PETITIONER

v.

ASSOCIATED DRY GOODS CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY MEMORANDUM FOR THE PETITIONER

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Contrary to respondent's suggestion (Br. in Opp. 8-9), *H. Kessler & Co.* v. *EEOC*, 472 F. 2d 1147 (5th Cir.) (en banc), cert. denied, 412 U.S. 939 (1973), which respondent concedes is in direct conflict with the decision below, continues to have full force and effect. Although *Kessler* was decided under the 1964 Act, there were no substantive changes in Sections 706(b) and 709(e) of Title VII (42 U.S.C. 2000e-5(b) and 2000e-8(e)) or in any amendments to the Act to suggest that Congress intended a change in the scope of the ban on publicizing (see Pet. 13 n.4).

Respondent argues (Br. in Opp. 9) that *Kessler* has been eclipsed by the 1972 amendments to Title VII, which purportedly "now" give a private plaintiff " 'adequate means of prosecuting the litigation.' " This is apparently a reference to the provisions in the statute for court-appointed counsel and for the award of reasonable

attorney's fees to successful private plaintiffs. See *Sears, Roebuck & Co.* v. *EEOC*, 581 F. 2d 941, 947-948 (D.C. Cir. 1978). Both of these provisions, however, were in Title VII as originally enacted in 1964 and were unaffected by the 1972 amendments. See Sections 706(e), 706(k), Pub. L. No. 88-352, 78 Stat. 260-261 (now codified in 42 U.S.C. 2000e-5(f)(1), 5(k)).[1]

Respectfully submitted.

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MARCH 1980

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[1]Respondent is incorrect in stating that the *Kessler* decision is predicated on policy grounds. Rather, as the opinion reflects, although supported by policy considerations, the decision is primarily based on an extensive analysis of the statutory language and on the full legislative history concerning Title VII's disclosure prohibitions. See *H. Kessler & Co.* v. *EEOC*, *supra*, 472 F. 2d at 1150-1151.